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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,115	07/24/2003	H. William Harris JR.	2213.1004-012	9402

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,115

Applicant(s)

HARRIS ET AL.

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12 and 16 is/are rejected.
- 7) ☒ Claim(s) 7-11, 13-15, 17-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/14/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjaltason et al. (6,789,502) in view of Fajt (5525353). Hjaltason et al. disclose an aquatic food composition comprising at least 0.5 wt% sodium chloride (col. 6, lines 6-14). Fajt teaches use of fortifying agents in aquatic animal feed; wherein such fortifying agents include but are not limited to vitamins, minerals. Proteins, amino acids, ...etc; and wherein preferred amino acids include tryptophan (col. 6, lines 6-21). Although the combination of Hjaltason and Fajt does not specifically disclose the claimed weight percentage of NaCl or tryptophan in the composition, it would have been obvious to one having ordinary skill in the art at the time the invention was made in order to provide the optimal concentration of nutrient requirements for the aquaculture environment for a particular species. Since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is

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the optimum combination of percentages. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980) ("[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art." See, e.g., In re Baird, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *In re Peterson* Appeal No. 02-1189 (Fed. Cir. January 8, 2003). Where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

3. Claims 1-6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjaltason et al. (6,789,502) in view of Prochnow et al. (5827551). Prochnow et al. teach a wide variety of fish attractants including sodium chloride and amino acids (col. 2, lines 24-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hjaltason et al. and Prochnow to provide an aquatic food composition including fish attractants including sodium chloride and amino acids in order to attract the fish to the feed so they may have consume the proper amount of nutrients. Further, although tryptophan is not specifically disclosed, it is a well known amino acid, and as such would have been obvious to include in the attractant composition of Prochnow et al.

4. Claims 1-6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjaltason et al. (6,789,502) in view of Sano et al. (4778808). Sano et al. teach a basic feed mixture which includes minerals such as sodium chloride and amino acids;

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wherein the basic feed plus L-tryptophan was fed to animals (col. 4, lines 59-68 (Example 3)). See above paragraphs (2,3) for motivation.

5. Claims 1-6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjaltason et al. (6,789,502) in view of Horiuchi et al. (JP 411341934A). Horiuchi et al. teach administering tryptophan to fish to enable safe transport. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate tryptophan into the aquatic food composition of Hjaltason et al. as a less invasive means of administering the tryptophan to transport the fish or to provide additional nutrient fortification.

6. Claims 1-6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjaltason et al. (6,789,502) in view of Isihara et al. (4243661). Isihara et al. teach growth increasing agents; wherein other additives may be blended therewith including sodium chloride and amino acids (col 6, lines 15-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hjaltason et al. and Isihara et al. to provide an aquatic food composition including fish attractants including sodium chloride and amino acids in order to attract the fish to the feed so they may have consume the proper amount of nutrients. Further, although tryptophan is not specifically disclosed, it is a well known amino acid, and as such would have been obvious to include in the attractant composition of Isihara et al.

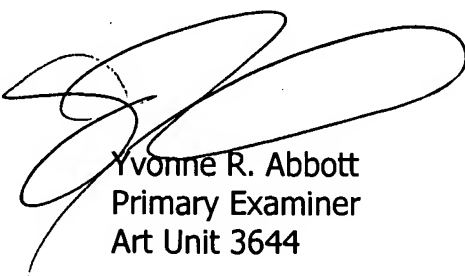
Allowable Subject Matter

7. Claims 7-11, 13-15 and 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
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7/21/05